

DUPAGE WATER COMMISSION

RESOLUTION NO. R-32-02

A RESOLUTION APPROVING, RATIFYING, AND ACCEPTING AN  
INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF LAKE MICHIGAN  
WATER TO AREAS OF DUPAGE COUNTY AFFECTED BY CONTAMINATION

WHEREAS, the DuPage Water Commission (the "Commission") is a public corporation created under the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.*, and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and is authorized to enter into contracts and agreements relating to the purchase and supply of water pursuant to the laws of the State of Illinois; and

WHEREAS, certain areas of DuPage County have been affected by contaminated well water, which contamination poses a significant threat to the health and safety of numerous individuals; and

WHEREAS, the Commission, the County of DuPage (the "County"), and the Charter Customers of the Commission desire to create a method of providing an adequate supply of Lake Michigan water to areas of the County affected by such contamination;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: An Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected by Contamination, in substantially the form attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1, with such modifications as may be required or approved by the Board of Commissioners of the



DuPage Water Commission, shall be and it hereby is approved and accepted by the DuPage Water Commission; the Board of Commissioners of the DuPage Water Commission hereby ratifying, affirming, approving, and accepting all actions of the Commission related thereto.

SECTION THREE: The Chairman of the DuPage Water Commission shall be and hereby is authorized and directed to execute, and the Acting Clerk shall be and hereby is authorized and directed to attest, an Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected by Contamination, in substantially the form attached hereto as Exhibit 1, with such modifications as may be required or approved by the Board of Commissioners of the DuPage Water Commission; provided, however, that the Agreement shall not be so executed on behalf of the Commission unless and until the Chairman of the Commission shall have been presented with copies of the Agreement executed by the County of DuPage and at least one Charter Customer of the Commission. Upon execution by the Chairman, the Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected by Contamination, and all things provided for therein, shall be deemed accepted by the DuPage Water Commission without further act.

SECTION FOUR: This Resolution shall be in full force and effect from and after its adoption.

AYES:

NAYS:

ABSENT:

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Acting Clerk

**EXHIBIT 1**

**AUGUST 8, 2002  
DRAFT**

**INTERGOVERNMENTAL AGREEMENT**

**FOR THE PROVISION OF**

**LAKE MICHIGAN WATER TO**

**AREAS OF DUPAGE COUNTY**

**AFFECTED BY CONTAMINATION**

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF LAKE MICHIGAN WATER TO AREAS OF DUPAGE COUNTY AFFECTED BY CONTAMINATION (this "Agreement") is made as of \_\_\_\_\_, 2002, by and between the DuPage Water Commission, Counties of DuPage, Cook, and Will, Illinois (the "Commission"), a commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code and the Water Commission Act of 1985; the County of DuPage, Illinois (the "County"), a body corporate and politic; and those units of local government of the State of Illinois hereafter defined as the "Charter Customers," as each executes this Agreement.

## ARTICLE ONE

### RECITALS

WHEREAS, the Commission is a public corporation created under the Water Commission Act of 1985, as amended, and Division 135 of Article 11 of the Illinois Municipal Code, and is authorized to enter into contracts and agreements relating to the purchase and supply of water pursuant to the laws of the State of Illinois; and

WHEREAS, the County is a unit of local government, organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the Charter Customers are units of local government, organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the Charter Customers have entered into a Contract with the Commission to purchase Lake Water sufficient to meet the water supply needs of the Charter Customers and others (the "Water Purchase and Sale Contract" as hereafter defined); and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act, as amended, the Commission, the County, and the Charter Customers are authorized to enter into this Agreement; and

WHEREAS, certain areas of the County have been affected by contaminated water, which poses a significant threat to the health and safety of numerous individuals; and

WHEREAS, subject to certain limitations, each of the Commission, the County, and the Charter Customers are authorized by law to engage in the retail sale of water to areas of the County affected by contaminated well water; and

WHEREAS, the Commission, the County, and the Charter Customers, desire to create a method of providing an adequate supply of Lake Michigan water to areas of the County affected by contamination;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

## ARTICLE TWO

### DEFINITIONS

2.1. "Agreement" means this Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected by Contamination.

2.2. "Charter Customer" means a unit of local government of the State of Illinois (not including the Commission) that is a party to the Water Purchase and Sale Contract, excluding, however, any such unit of local government whose rights and obligations under the Water Purchase and Sale Contract have been terminated.

2.3. "Commission" means the DuPage Water Commission, Counties of DuPage, Cook, and Will, Illinois.

2.4. "Connection Costs" has the meaning set forth in Section 5.2.

2.5. "County" means the County of DuPage, Illinois.

2.6. "Customer" means any person who purchases Lake Water from a Charter Customer pursuant to this Agreement solely for use by that person and not for redistribution or resale.

2.7. "Customer Costs" has the meaning set forth in Section 5.2.

2.8. "Effective Date" means the effective date of this Agreement, as defined in Section 8.1.

2.9. "Existing Main" means a water main, existing or under construction on the Effective Date of this Agreement, of a Charter Customer from which a Customer within a Service Area can receive service under the terms and conditions of this Agreement without the need for the Charter Customer to construct a New Main.

2.10. "Lake Water" means potable, filtered water drawn from Lake Michigan.

2.11. "MCL" means a maximum contaminant level as determined in accordance with Section 3.2.

2.12. "Market Rate" means the average cost of borrowing of the Commission.

2.13. "New Main" means a water main and related infrastructure, not existing or under construction on the Effective Date of this Agreement, constructed by a Charter Customer for the purpose of providing service to a Service Area under the terms and conditions of this Agreement. New Main shall not include a water main constructed by a Charter Customer exclusively for reasons other than providing service under the terms of this Agreement.

2.14. "Pathway Service Area" has the meaning set forth in Section 3.2.

2.15. "Potential Customer" means any Customer or any other person currently requiring water service on property located within a Service Area. For purposes of this definition, property currently requiring water service includes property for which a building permit has been issued.

2.16. "Primary Service Area" has the meaning set forth in Section 3.2.

2.17. "Professional Fees" has the meaning set forth in Section 5.2.

2.18. "Recapture Costs" has the meaning set forth in Section 5.2.

2.19. "Secondary Service Area" has the meaning set forth in Section 3.2.

2.20. "Service Area" means either a Primary Service Area, a Secondary Service Area, or a Pathway Service Area. The term Service Area will be used in provisions of this Agreement that are intended to apply to any type of Service Area, regardless of whether it is a Primary Service Area, a Secondary Service Area, or a Pathway Service Area. When a provision of this Agreement is intended to apply specifically to a Primary Service Area, specifically to a Secondary Service Area, or specifically to a Pathway Service Area, the appropriate term will be used.

2.21. "Service Costs" means Service Provision Costs, Recapture Costs, Connection Costs, Customer Costs, and Professional Fees.

2.22. "Service Provision Costs" has the meaning set forth in Section 5.2.

2.23. "Source Well" has the meaning set forth in Section 3.2.

2.24. "Task Force" means the Commission task force established for the purpose of advising the Commission on the implementation of this Agreement, or if no longer in existence, shall mean the Commission or any other committee or task force of the Commission so delegated.

2.25. "Water Allocation" means, with respect to a Charter Customer, such Charter Customer's allocation and allowable excess from time to time of Lake Water pursuant to the Level of Lake Michigan Act, as amended from time to time (See the State of Illinois Department of Transportation, Division of Water Resources Decision on 1989 Allocation Review, Order No. LMO 89-2 and subsequent orders of the State of Illinois Department of Transportation, Division of Water Resources, or the successor to its responsibilities, the State of Illinois Department of Natural Resources, Office of Water Resources); and such other amounts of Lake Water as such Charter Customer may lawfully take.

2.26. "Water Purchase and Sale Contract" means the water purchase and sale contract, dated June 11, 1986, between the Commission and the Charter Customers, as amended or supplemented from time to time.



## ARTICLE THREE

### AREAS TO BE SERVED

3.1. Provision of Lake Water to Service Areas. Charter Customers will provide, and Customers may receive, Lake Water in conformance with the terms and conditions described in this Agreement.

3.2. Service Areas. Service Areas shall be determined by the Commission, with the advice of the Task Force, as follows. If, as a result of testing conducted pursuant to Section 3.3, a well is located that exhibits a level of any regulated chemical that exceeds maximum contaminant level ("MCL") as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.* (the "Source Well"), the Commission shall retain an engineer, with the advice of the Task Force, who shall conduct additional testing. If, upon completion of the additional testing, the engineer determines that:

a. over fifty percent (50%) of the sampled wells in an area emanating from the Source Well have levels of any regulated chemical that exceed MCL as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, then that area shall be designated by the Commission as a "Primary Service Area."

b. in an area that the Commission determines to be in reasonable proximity to a Primary Service Area:

i. over fifty percent (50%) of the sampled wells contain detectable concentrations of the same regulated chemical as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, that is found in the reasonably proximate Primary Service Area; or

ii. over fifty percent (50%) of the sampled wells have levels of any regulated chemical as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, which contain detectable concentrations but do not exceed MCL and which, after reviewing an engineer's report, the Commission determines are substantially likely to exceed MCL in the reasonably foreseeable future,

then that area shall be designated by the Commission as a "Secondary Service Area."

Notwithstanding the requirements of Section 3.2.a., the Commission may designate an area as a Primary Service Area if the engineer retained by the Commission determines that a significant life, safety, or health risk related to human consumption of water is posed in the area or is likely to be posed in the future. Upon designation by the Commission, service under the terms of this Agreement shall be offered

to all Primary Service Areas and Secondary Service Areas, as well as, in the case of service from New Mains, to the area along the pathway of the New Main that is not either a Primary Service Area or a Secondary Service Area ("Pathway Service Area"). The Commission has the authority to split a Service Area into one or more Service Areas if the Commission, with the advice of the Task Force, determines that it is more practical to provide service to a Service Area through the combination of one or more New Mains or Existing Mains. For each Service Area, an implementing agreement will be prepared and approved by the County, the Commission, and the Charter Customer that is to provide service to the Service Area. The implementing agreement for each Service Area will include: (a) financing terms prepared in accordance with Section 5 of this Agreement; (b) terms and conditions specific to the provision of service by the Charter Customer to the particular Service Area; and (c) a map of the Service Area, which shall be the definitive source regarding the boundaries of the Service Area and shall govern any disputes that arise concerning locations to be served in the Service Area. Without regard to any other provision of this Agreement, no party hereto shall be obligated to take any action pursuant to this Agreement until the County, the Commission, and the Charter Customer asked to provide Lake Water, have entered into an implementing agreement. The decision whether or not to enter into an implementing agreement shall be within the sole and absolute discretion of each party.

3.3. Testing for Contamination. The County will oversee the process of testing for contamination. Testing will be conducted by laboratories certified for chemical analysis of potable water by the Illinois Environmental Protection Agency Division of Laboratories.

3.4. Payment of Costs for Testing. The County will be responsible for paying or seeking reimbursement for the costs of testing for contamination.

3.5. Commission Reimbursement for Certain Contamination Testing Costs. To the extent that the County anticipates that it will:

- a. incur costs that are out of the ordinary or in excess of the County's current budget for contamination testing; or
- b. be unable to obtain reimbursement from other sources,

it may, prior to conducting testing, submit a request to the Commission for consideration of reimbursement of such costs from the Commission. This request will be reviewed by the Task Force, which shall make a recommendation to the Commission as to whether Commission reimbursement is appropriate. If the Commission approves reimbursement, the costs will be allocated by the Commission, whenever possible, to the cost of providing service to the Service Area in which testing was conducted.

## ARTICLE FOUR

### PROVISION OF SERVICE

4.1. Service from an Existing Main. If an Existing Main can be used to provide service to a Service Area, the Charter Customer that owns the Existing Main will make Lake Water available to the Service Area from the Existing Main, provided, however that if, in any Service Area, an intergovernmental agreement has been entered into pertaining to the Existing Main, then that intergovernmental agreement shall govern and shall determine which Charter Customer will make Lake Water available to the Service Area from the Existing Main.

4.2. Service from a New Main. If an Existing Main is not available to provide service to a Service Area, the closest adjacent Charter Customer, to the extent not prohibited by law or existing intergovernmental or boundary agreement, shall make Lake Water available through the construction of a New Main in order to provide Lake Water to the Service Area. If the closest adjacent Charter Customer is unable to make Lake Water available through the construction of a New Main, because the Charter Customer is prohibited from doing so by law or existing intergovernmental or boundary agreement, then another adjacent Charter Customer shall make Lake Water available through the construction of a New Main.

If:

- a. there is no Charter Customer adjacent to a Service Area; or
- b. all Charter Customers adjacent to a Service Area are unable to make Lake Water available through the construction of a New Main, because all Charter Customers adjacent to a Service Area are prohibited from doing so by law or existing intergovernmental or boundary agreement; or
- c. if the Charter Customers adjacent to a Service Areas are unable to agree to a method of making Lake Water available through the construction of a New Main,

then the Commission, with the advice of the Task Force, will determine the method by which Lake Water will be made available through the construction of a New Main.

4.3. Task Force Advisory Role. The Task Force shall advise the Commission regarding the provision of service under this Agreement, which shall include, but not be limited to, advising the Commission on the methods of determining costs of and financing for service described in Article 5 of this Agreement and advising the Commission on the terms of service described in Article 6 of this Agreement.

## ARTICLE FIVE

### COSTS OF AND FINANCING FOR SERVICE

5.1 Financing Process. After a Service Area is designated, Service Costs related to providing service shall be determined and a means of providing financing for service shall be made available as set forth below. The Task Force shall advise the Commission on the process of determining Service Costs and arranging financing for each Service Area.

5.2. Determination of Service Costs. The Task Force shall advise the Commission on Service Costs for each Service Area. The final determination of Service Costs for each Service Area shall be determined by the Commission. These Service Costs may vary based upon field contingencies related to each Service Area. The Service Costs shall consist of the following components:

- a. reasonable engineering, construction, and property acquisition costs incurred by the County, the Commission, or the Charter Customer related to providing service to a Service Area ("Service Provision Costs");

b. reimbursement of the Charter Customer for actual costs previously expended for construction of Existing Mains used to provide service to a Customer, as contained in the ordinances of the Charter Customer ("Recapture Costs");

c. *reasonable connection costs and other fees that a Customer must pay in order to receive service from a Charter Customer, which the Task Force shall recommend and the Commission shall determine for each Customer of a Service Area ("Connection Costs");*

d. reasonable costs incurred by each Customer in order that the Customer's property may receive service from a New Main or an Existing Main, which the Task Force shall recommend and the Commission shall determine for each Customer of a Service Area ("Customer Costs"); and

e. reasonable professional fees allocated to the Service Area as described in Section 5.3 ("Professional Fees") (Service Provision Costs, Recapture Costs, Connection Costs, Customer Costs, and Professional Fees are collectively referred to as "Service Costs").

If a portion of a New Main or an Existing Main is used to serve an area that is not a Service Area, then the Service Costs for the Service Area shall be reduced accordingly on a proportionate basis. Separate determinations of residential Service Costs and commercial and industrial Service Costs may be made for each Service Area.

5.3. Professional Fees. Professional Fees shall include reasonable legal fees, limited to those borne by the County, the Commission, and the Charter Customers, related to negotiating, executing, and preparing the Agreement, which shall be reimbursed by the Commission. Professional Fees shall also include: (a) public relations fees related to encouraging Potential Customers from a Service Area to receive service, as described in Section 6.6, and (b) contamination testing costs, as described in Section 3.5, for which the Task Force shall make a recommendation and the Commission shall make a final determination that they be:

a. allocated over all Service Areas to which service is provided;

b. allocated to a particular Service Area to which service is provided, if the Professional Fees directly relate to the provision of service to a particular Service Area;

c. reimbursed by the Commission from a reserve established by the Commission; or

d. neither allocated pursuant to Section 5.3.a. or Section 5.3.b. nor reimbursed pursuant to Section 5.3.c.

5.4. Special Service Areas. For each Service Area in which service shall be provided, the County will have the option of proposing and implementing a special service area. If the County chooses not to propose and implement a special service area, it shall give notice to the Charter Customer that is to provide service to the Service Area and the County and the Charter Customer that is to provide service to the Service Area will confer as to whether the implementation of a special service area is appropriate. If the County and the Charter Customer that is to provide service to the Service Area cannot agree as to whether implementation of a special service area is appropriate, the appropriateness of implementation of a special service area will be submitted to the Task Force, which shall make a

recommendation to the Commission, which shall determine whether a special service area will be pursued in the Service Area. The Commission will provide financing for Service Costs for each special service area that is created as described in this Section 5.4. on the same terms (i.e. interest rate and maturity date) as described hereafter in Section 5.5. The Service Costs for each special service area that is created as described in this Section 5.4 shall be determined as described above in Section 5.2, and shall also include reasonable costs incurred by the County related to the establishment and operation of the special service area, which costs shall be determined as described above in Section 5.2. The County and the Charter Customer that is to provide service to the Service Area will cooperate in billing and collecting any Service Costs payable as a result of each special service area that is created as described in this Section 5.4. A Charter Customer will have the option of proposing and implementing a special service area with the same rights, terms, and conditions that apply to the County under this Section 5.4.

5.5. Loans from Commission to Charter Customers. If:

- a. after the completion of the process described in Section 5.4, a special service area is not pursued; or
- b. the implementation of a special service area is rejected in a Service Area; or
- c. for any other reason, a special service area cannot be implemented in a Service Area,

then the Commission shall provide twenty (20) year loans to the Charter Customer that provides service to the Service Area at a rate of two percent (2%) per annum for the residential Service Costs related to the Service Area and at the Market Rate for the commercial and industrial Service Costs related to the Service Area. The Commission will provide funds to Charter Customers either through the Commission's cash on hand or via the issuance of the Commission's revenue bonds. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments of equal installments will be due annually, beginning six years after the loan is made. The Charter Customer will be required to pay the Commission at least the following amount annually: the total amount of interest and principal due that year multiplied by the number of Customers in the Service Area divided by the number of Potential Customers in the Service Area. If any Charter Customer debt remains after the twenty (20) year loan period concludes, the Commission shall extend the terms of the loan made to the Charter Customer for a commercially reasonable period, provided the Charter Customer is not in default.

5.6. Charter Customer Charges to Customers. A Charter Customer may charge each Customer no more than each Customer's proportionate share of Service Costs based on the number of Potential Customers in a Service Area, provided, however, that if, in a Service Area in which service is to be provided via a New Main, the implementation of a special service area is rejected, then the proportionate share of Service Costs that the Charter Customer may charge each Customer shall be no more than the following amount: the total amount of Service Costs for the Service Area divided by nine-tenths (9/10) of the number of Potential Customers in the Service Area (unless more than nine-tenths (9/10) of the number of Potential Customers in the Service Area are Customers, in which case a Charter Customer may charge each Customer no more than each Customer's proportionate share of Service Costs based on the number of Potential Customers in the Service Area). If at any time the number of Potential Customers in a Service Area exceeds the number of Potential Customers in the Service Area at the time proportionate shares are initially calculated, then the proportionate share of

each Customer in the Service Area shall be adjusted accordingly. A Charter Customer may, with Commission approval, adjust the charges for each Customer based on factors such as the water consumption of each Customer and whether the Customer is a residential or commercial or industrial Customer.

5.7. Loans from Charter Customers to Customers. Each Charter Customer receiving a loan from the Commission shall offer twenty (20) year loans to residential Customers at a rate of two percent (2%) per annum for each residential Customer's proportionate share of Service Costs, as determined in accordance with Section 5.6. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments of equal installments will be due annually beginning six years after the loan is made. Each Charter Customer shall offer twenty (20) year loans to commercial and industrial Customers at the Market Rate as of the date of the loan for each commercial or industrial Customer's proportionate share of Service Costs, as determined in accordance with Section 5.6. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments will be due annually beginning six years after the loan is made. If the proportionate share of each Customer in a Service Area is adjusted pursuant to Section 5.6, then the loan amounts and repayment amounts will be recalculated accordingly. The twenty (20) year loan term shall apply only to Customers who enter into loan agreements when loans are initially offered in a Service Area. Customers who enter into loan agreements after loans were initially offered in a Service Area shall have only the remaining number of years to repay the loan as Customers who entered into loan agreements when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall have twenty (20) years to repay the loan; if the loan is taken in year 5, the Customer shall have fifteen (15) years to repay the loan. Furthermore, Customers who enter into loan agreements after loans were initially offered in a Service Area shall be responsible for interest payments as if they entered into a loan agreement when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall begin paying interest in year 1 through the term of the loan; if the loan is taken in year 5, the Customer shall be responsible for paying interest for years 1-4, as well as paying interest from year 5 through the term of the loan. The form of the loan agreement offered by a Charter Customer to a Customer will be reviewed by the Commission prior to its use.

5.8. Potential Grant Programs. The Task Force shall advise the Commission as to the extent to which grants may be available (a) to assist in providing financing for the provision of service in each Service Area, and (b) to assist Customers from Service Areas who are unable to afford Customer Costs.

5.9. Grants to Customers. The County and the Charter Customer that provides service to a Service Area will cooperate in order to obtain and distribute grants to assist Customers who satisfy applicable grant criteria.

## ARTICLE SIX

### TERMS OF SERVICE

6.1. Lake Water to be Made Available as Soon as Practicable. A Charter Customer will make Lake Water available as soon as practicable from its existing Water Allocation to a Service Area.

6.2. Condition of Service to Secondary Service Areas. If service can only be provided to a Secondary Service Area through a New Main, then, as a condition of being eligible to receive service under the terms of this Agreement:

- a. a special service area, as described above in Section 5.4, must be implemented in the Secondary Service Area; or
- b. if the implementation of a special service area is rejected in a Secondary Service Area, or for any other reason a special service area cannot be implemented in a Secondary Service Area, at least seventy percent (70%) of property owners within the Secondary Service Area must sign a pre-annexation agreement or a water service or water loan agreement with the Charter Customer providing service to the Secondary Service Area.

If these conditions are not met and service under the terms of this Agreement is not provided in a Secondary Service Area, the County and the Charter Customer that was to provide service to the Secondary Service Area shall be reimbursed by the Commission for reasonable costs related to attempting to provide service to the Secondary Service Area, such as, but not limited to, engineering costs and costs related to preparation of establishment of a special service area.

6.3. Service from an Existing Main. Pursuant to the other terms of this Agreement, Charter Customers shall offer access to an Existing Main:

- a. immediately after a Customer from a Service Area signs a pre-annexation agreement with the Charter Customer, if such an agreement is required by the Charter Customer as a condition of receiving Lake Water; or
- b. within ninety (90) days of the execution of this Agreement, if a pre-annexation agreement is not required by the Charter Customer.

6.4. Service from a New Main. Within thirty (30) days of the date that a Service Area becomes eligible for service from a New Main, or by the date determined by the Commission if the Charter Customer submits, and the Commission approves, a written request to the Commission for an extension of the thirty (30) day period, the Charter Customer serving the Service Area shall provide a schedule to the County that shall include necessary engineering and construction considerations, including projected completion dates, related to construction and installation of the New Main. If the County determines that the project completion date for the construction of the New Main is unacceptable because (a) of life, safety, and health concerns of the County related to providing Lake Water to the Service Area, and (b) the County has the ability to provide service to the Service Area more rapidly, then the County may submit a request to the Task Force to expedite the construction of the New Main. The Charter Customer may submit evidence to the Task Force and the Commission regarding the reasonableness of the Charter Customer's proposed project completion date. The Task Force shall make a recommendation to the Commission regarding whether the County's request should be granted. The Commission shall review the Task Force's recommendation and shall determine whether to approve the County's request. If the Commission approves the County's request, the New Main will be built to the specifications of the Charter Customer providing Lake Water to the Service Area. Upon completion, the New Main will be dedicated by the County to the Charter Customer providing service to the Service Area. The Commission will reimburse the County for its share of Service Costs related to providing

service to the Service Area in the same manner as the Charter Customer is reimbursed. The Commission will charge these costs to the Charter Customer providing service to the Service Area. In order to repay these costs, the Charter Customer will be entitled to a loan from the Commission and the Customers in the Service Area will be entitled to a loan from the Charter Customer under the terms described in Article Five of this Agreement. To the extent not expressly provided for herein, the County and each Charter Customer do not waive any legal rights to act independently from this Agreement in order to construct New Mains or to take any other actions necessary to provide water service.

6.5. Notice to Potential Customers from Service Areas. After a method of financing service is determined for a Service Area, the Charter Customer providing service to the Service Area shall give notice of the Service Costs to Potential Customers from the Service Area. Potential Customers offered Lake Water from an Existing Main shall have a period of no less than ninety (90) days from the date that Service Cost information is sent to them for initial consideration of whether they wish to receive service from the Charter Customer. Potential Customers offered Lake Water from a New Main shall have a period of no less than six months from the date that Service Cost information is sent to them for initial consideration of whether they wish to receive service from the Charter Customer. Service Cost information shall be determined as described above in Sections 5.2 and 5.3.

6.6. Cooperation Concerning Customers. The County, the Commission, and the Charter Customers shall cooperate in efforts to maximize the number of Customers from Service Areas who receive Lake Water. Such cooperation shall include, but not be limited to: (a) public relations activities and other forms of publicity detailing the benefits of receiving Lake Water; (b) establishing a public record that an area is contaminated and notifying property owners of the contamination; and (c) such other activities upon which the County, the Commission, and the Charter Customers agree.

6.7. Cooperation Concerning Property Acquisition. The County, the Commission, and the Charter Customers shall cooperate in acquiring property rights necessary to provide service under the terms of this Agreement.

6.8. Limitations on Conditions and on Annexation. A Charter Customer may require that each Customer enter into a pre-annexation agreement or, where annexation is not a condition of service, a water service or water loan agreement with the Charter Customer as a pre-condition of receiving Lake Water from the Charter Customer under the terms of this Agreement. Any such agreement shall not require annexation earlier than ten years from the end of the respective initial consideration periods described in Section 6.5. During the period before annexation, a Charter Customer will not require implementation of any conditions on the provision of Lake Water to a Customer, except those set forth in a pre-annexation agreement that are allowed by generally applicable laws, ordinances, rules, and regulations related to the receipt and use of Lake Water (such as sprinkling limitations and sanitary plumbing requirements). Except as provided herein, Charter Customers do not waive any annexation rights to which they may be entitled under State law or under pre-existing annexation agreements or pre-annexation agreements.

6.9. Right to Discontinue Service. To the extent authorized by law, Charter Customers shall have the right to discontinue service to any Customer of a Service Area who receives Lake Water from the Charter Customer if the Customer of the Service Area:

- a. fails to meet regular payment obligations for Lake Water;



- b. fails to pay appropriate costs related to the costs of receiving service, including the Customer's share of Service Costs; or
- c. breaches a pre-annexation agreement with the Charter Customer.

Furthermore, to the extent authorized by law, a lien will attach to the property of the Customer of the Service Area in the amount that the Customer is in default to the Charter Customer providing Lake Water.

6.10. Ability to Charge Differential Rate. A Charter Customer may provide Lake Water to Customers of a Service Area at a differential rate than to a Charter Customer's own municipal customers so long as the rate is not unreasonably discriminatory as described in Illinois common law.

## ARTICLE SEVEN

### DEFAULTS AND REMEDIES

7.1. Commission Default and County and Charter Customer Remedies. The occurrence of the following shall constitute a default by the Commission under this Agreement: failure by the Commission to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the Commission's receipt of written notice thereof from either the County or any Charter Customer (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the Commission within such thirty (30) day period, and the Commission shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the Commission to cure or correct such matter.

If the Commission defaults under this Agreement, the remedies of a Charter Customer or the County, as affected, shall be limited to an action in equity against the Commission to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the Commission's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the Commission.

7.2. County Default and Commission and Charter Customer Remedies. The occurrence of the following shall constitute a default by the County under this Agreement: failure by the County to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the County's receipt of written notice thereof from either the Commission or any Charter Customer (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the County within such thirty (30) day period, and the County shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the County to cure or correct such matter.

If the County defaults under this Agreement, the remedies of a Charter Customer or the Commission, as affected, shall be limited to an action in equity against the County to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the County's

obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the County.

7.3. Charter Customer Default and Commission and County Remedies. The occurrence of any or more of the following matters shall constitute a default by a Charter Customer under this Agreement: failure by a Charter Customer to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the Charter Customer's receipt of written notice thereof from either the County or the Commission (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the Charter Customer within such thirty (30) day period, and the Charter Customer shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the Charter Customer to cure or correct such matter.

If a Charter Customer defaults under this Agreement, the remedies of the County or the Commission, as affected, shall be limited to an action in equity against the Charter Customer to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the Charter Customer's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the Charter Customer.

7.4. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, terrorism, acts of terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or of any Charter Customer to deliver Lake Water hereunder, or of any Charter Customer to receive Lake Water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. The Task Force shall make a recommendation to the Commission, which shall determine if force majeure which renders any of the parties unable to perform under this Agreement shall relieve a Charter Customer of its obligations to make payments to the Commission that may be required under Section 5.

## ARTICLE EIGHT

### MISCELLANEOUS

8.1. Effective Date and Term. The County and the Commission shall authorize and execute this Agreement and offer it to the Charter Customers. Each Charter Customer shall have until November 1, 2002, to authorize the execution of and execute a counterpart of this Agreement as acceptance hereof and to file same with the Clerk of the Commission. This Agreement will become effective on the date upon which the first Charter Customer shall have executed and filed a counterpart hereof (the "Effective Date"). If effective as hereinabove provided, this Agreement shall continue in full force and effect (a) for a period of forty (40) years after the Effective Date or (b) until the termination of the Commission, whichever is earlier. The County, the Commission, and the Charter Customers agree to begin consideration of whether an extension of this Agreement is necessary not later than three (3) years prior to the end of the term of this Agreement.

8.2. Assignment. Neither the County, nor the Commission, nor any Charter Customer may assign, convey, or transfer this Agreement, or any part hereof, without prior written consent of the other parties to this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.

8.3. Entire Agreement. This Agreement represents the entire agreement between the County, the Commission, and the Charter Customers that execute this Agreement with respect to the obligations and transactions to be performed hereunder, and supersedes all prior negotiations, proposals, term sheets, representations, or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by the County, the Commission, and each of the Charter Customers that executes this Agreement. Nothing in this Agreement shall supersede, modify, terminate, or alter in any way the terms and provisions of the Water Purchase and Sale Contract, which shall remain in full force and effect.

8.4. Notices. All notices or communications provided for herein shall be in writing and shall be delivered to the County, the Commission, or the Charter Customers affected either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed to the principal office thereof.

Any action hereunder to be taken by the County, the Commission, or any Charter Customer may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk of the County, the Commission, or such Charter Customer.

8.5. No Waiver. No course of dealing or failure of the County, the Commission, or any Charter Customer to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

8.6. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

8.7. Limitation on Commission's Financial Commitment. Notwithstanding any other provision of this Agreement, at no time during the term of this Agreement shall the Commission's total financial commitment under this Agreement exceed ten million dollars (\$10,000,000). No Charter Customer shall be required to take any action under this Agreement, including, but not limited to, matters relating to the Task Force, after the Commission has made a total financial commitment of ten million dollars (\$10,000,000).

8.8. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

8.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed by their duly authorized officers, all on the date set opposite their respective corporate names.

DUPAGE WATER COMMISSION

By: \_\_\_\_\_

Chairman

Date: \_\_\_\_\_

[SEAL]

Attest:

By: \_\_\_\_\_

Clerk

COUNTY OF DUPAGE, ILLINOIS

By: \_\_\_\_\_

Chairman

Date: \_\_\_\_\_

[SEAL]

Attest:

By: \_\_\_\_\_

[CITY/VILLAGE] OF \_\_\_\_\_, ILLINOIS

By: \_\_\_\_\_

[Mayor/President]

Date: \_\_\_\_\_

[SEAL]

Attest:

By: \_\_\_\_\_

[City/Village] Clerk